IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET.

SECOND APPEAL NO.34 OF 2005

Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

Shri P.G.Karande for the Appellant.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 16, 2005.

P.C.:

1. Heard Shri Karande for the Appellant. The Appellant is the original Defendant No.42 in a suit for partition and separate possession filed by the Respondent No.1. The Trial Court decreed the suit and the Appellate Court has partly confirmed the Decree passed by the Trial Court.

2. Shri Karande submitted that the Appellant has relied upon a Will executed by Bhigirathibai and the said Will has been discarded by the Courts below only on the ground that it is not in proper form and it is in the form of an Affidavit. No particular form for writing of Will is prescribed.

3. The finding of the Trial Court is that there is no proper attestation on the said document at Exh.101 i.e. the said Will. Even assuming that the signature on the said document at Exh.101 of Advocate Shri Shamrao Deshmukh is taken as a signature of attesting witness, it is not attested by minimum two witnesses. I have perused a xerox copy of the alleged Will, it bears signature of only one witness i.e. signature of Advocate Deshmukh. It is, therefore, obvious that the Will was not valid and was rightly discarded by the courts below.

4. After having perused the documents on record and Judgments of the Courts below. I find that there is no merit in the Appeal. Second Appeal is dismissed with no order as to costs.

JUDGE.